

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 98-003MCFT
Motor Carrier Fuel Tax and Surtax
For The Period: 1994 - 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Motor Carrier: Motor Carrier Fuel Tax and Surtax

Authority: IC 6-6-4.1-1 *et seq.*; 45 IAC 13-1-1 *et seq.*

The taxpayer protests the assessment of motor carrier fuel tax and surtax based upon the best information available.

STATEMENT OF FACTS

The taxpayer operates a for hire hauling business that utilizes dump trucks. The taxpayer was contacted by the auditor by certified mail and instructed to make his records available for audit. The taxpayer did not comply with the request. The auditor made proposed assessments of motor carrier fuel tax and surtax based upon the "best information available" for such things as mileage and fuel. That is, absent any taxpayer supplied information, the auditor was required to estimate the taxpayer's mileage and fuel consumption. After the assessment, at the protest stage, the taxpayer retained representation and an administrative hearing date was scheduled for April 9, 1998. The administrative hearing was continued and scheduled for another date. The new hearing date was set for December 18, 1998. The taxpayer, in a letter dated December 17, 1998, requested to submit a brief in lieu of an in-person hearing. The Department granted the motion to file a brief, and stipulated that the brief must be postmarked by January 22, 1999. On February 10, 1999, the Department, in a letter, stated to the taxpayer that the "deadline, plus more than enough time to allow for mailing, has passed, and the Department has received no brief" The Department never received a brief from the taxpayer.

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DISCUSSION

Under Indiana Code 6-8.1-5-1(a), the taxpayer bears the burden of proving that the proposed assessment is wrong. The Department's assessment is "prima facie evidence that the department's claim for the unpaid tax is valid." Further, IC 6-8.1-5-1(c)(2) provides that when a taxpayer requests a hearing but fails to appear, the Department can issue a Letter of Finding and demand payment.

The Indiana Administrative Code, 45 IAC 15-5-3(b)(5) allows the taxpayer to opt for a written brief in lieu of a hearing. If the taxpayer elects to file a brief in lieu of a hearing, the taxpayer has waived the right to an administrative hearing. Taxpayer during the audit failed to provide the Department with pertinent records. The taxpayer's initial protest letter only makes unsubstantiated protestations (e.g., the taxpayer states the proposed assessment is wrong because, among other reasons, the taxpayer's trucks were "very old and in very poor operating condition and used mostly for off-site work."). The Department finds that taxpayer has failed to provide any evidence refuting the initial audit assessment.

FINDING

The taxpayer's protest is denied.

DP/PE/MR 010203